Department of Health & Human Services
Centers for Medicare & Medicaid Services
Center for Consumer Information and Insurance Oversight
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Frequently Asked Questions (FAQs) on Usage of Funds in Section 1303 Segregated Accounts by Qualified Health Plan (QHP) Issuers in the Individual Market

Summary: Section 1303 of the Patient Protection and Affordable Care Act (ACA), as implemented at 45 C.F.R § 156.280, establishes requirements with respect to coverage of certain abortion services by QHP issuers in the individual market. Section 1303 of the ACA and 45 C.F.R § 156.280 require individual market QHP issuers that cover abortion services for which federal funding is prohibited (non-Hyde abortion services)[1] to collect two separate payments from each enrollee per month: one for the actuarial value (AV) of coverage of non-Hyde abortion services (at least $1 per enrollee per month), and one for all other covered services.[2] Issuers must deposit these separate payments into segregated accounts and maintain the segregation of such funds.[3] We refer to these segregated accounts as the "non-Hyde abortion segregated account" and the "segregated account for all other covered services," respectively, when referring to these accounts individually. When referring to both accounts collectively, we use the terms "Section 1303 segregated accounts" or "segregated accounts."

The Centers for Medicare & Medicaid Services (CMS) understands that funds in many QHP issuers' Section 1303 segregated accounts holding payments received for coverage of non-Hyde abortion services have accumulated year over year because the AV of coverage of non-Hyde abortion services is generally less than $1 per enrollee per month. These segregated accounts may also generate interest, further increasing the total amount accumulated.

These FAQs discuss Section 1303 of the ACA and 45 C.F.R § 156.280 requirements in greater detail and provide guidance on how QHP issuers in the individual market can use the accumulated funds in their Section 1303 segregated accounts, and the non-Hyde abortion segregated accounts in particular.

[1] *See* 42 U.S.C § 18023(b)(1)(B)(i) and 45 C.F.R. § 156.280(d)(1), which define the scope of abortion services that are subject to federal funding restrictions. We herein refer to abortion services for which federal funding is prohibited as "non-Hyde abortion services," as these abortions are those that do not fall under a Hyde Amendment exception. Every year since 1976, Congress has included a provision known as the Hyde Amendment in annual appropriations legislation, which funds activities and services provided by the U.S. Department of Health and Human Services (HHS), including the activities and services provided by the Centers for Medicare & Medicaid Services (CMS). The Hyde Amendment prohibits taxpayer funding for abortion, except in cases of rape, incest, or maternal life endangerment.
[2] *See* 42 U.S.C § 18023(b)(2)(B)(i)(I) and (II), (b)(2)(D)(ii)(III); 45 C.F.R. § 156.280(e)(2)(i)(A) and (B), (e)(4)(iii).
[3] *See* 42 U.S.C § 18023(b)(2)(B)(ii), (b)(2)(C)(ii)(I) and (II); 45 C.F.R. § 156.280(e)(2)(iii), (e)(3)(ii)(A) and (B).

Q1. Does Section 1303 of the ACA require QHP issuers in the individual market to maintain the funds they collect under Section 1303(b)(2)(B)(i)(II) of the ACA and 45 C.F.R. § 156.280(e)(2)(i)(B) for coverage of non-Hyde abortion services in a non-Hyde abortion segregated account in perpetuity after the conclusion of the plan year in which the funds were collected?

A1. No. Once the coverage period ends at the conclusion of a plan year and all claims have been paid or accounted for, QHP issuers may treat the premium funds a QHP issuer collects under Section 1303(b)(2)(B)(i)(II) of the ACA and 45 C.F.R. § 156.280(e)(2)(i)(B) for coverage of non-Hyde abortion services, and segregates under Section 1303(b)(2)(C)(ii)(II) of the ACA and 45 C.F.R. § 156.280(e)(3)(ii)(B), in the same manner as other premium payments a QHP issuer collects for other covered services.

Q2. Are segregated funds collected by individual market QHP issuers pursuant to Sections 1303(b)(2)(B)(i)(I) and (II) of the ACA and 45 C.F.R § 156.280(e)(2)(i)(A) and (B) premium payments?

A2. Yes. Segregated funds collected pursuant to Sections 1303(b)(2)(B)(i)(I) and (II) of the ACA and 45 C.F.R § 156.280(e)(2)(i)(A) and (B) by QHP issuers in the individual market are premium payments. This includes both funds that QHP issuers collect to cover non-Hyde abortions in an amount equal to the AV of coverage of those services (but not less than $1 per enrollee, per month) and funds for all other covered services.[4]

Segregated funds are per enrollee per month premium payments that QHP issuers in the individual market collect from QHP enrollees for coverage of non-Hyde abortion services[5] or all other covered services for a specified enrollment term. After the coverage period ends at the conclusion of a plan year and all claims for that plan year have been paid or accounted for, unspent individual market premiums for the plan year become earned premium revenue. Such premium funds remaining in issuers' segregated accounts pursuant to Sections 1303(b)(2)(C)(ii)(I) and (II) of the ACA and 45 C.F.R. § 156.280(e)(3)(ii)(A) and (B) may be used for any lawful purpose[6] after the conclusion of a plan year and all claims for that plan year have been paid or accounted for. This is consistent with treatment of premiums more broadly and fundamental insurance principles that premiums are made in advance for coverage during a specified term and become earned premium revenue once that term is completed.[7]

Q3. Do individual market QHP issuers violate the requirement in Sections 1303(b)(2)(C)(ii)(I) and (II) of the ACA and 45 C.F.R. § 156.280(e)(3)(ii)(A) and (B) that non-Hyde abortion segregated funds be "used exclusively" for non-Hyde abortion services if they treat these

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[4] *See supra* note 2.
[5] The portion of a premium to be deposited in the non-Hyde abortion segregated account dedicated to paying costs for non-Hyde abortions is to be determined through a calculation that "may take into account the impact on overall costs of the inclusion of such coverage," but issuers "may not estimate such a cost at less than $1 per enrollee, per month." (*See* 42 U.S.C. § 18023(b)(2)(D)(ii)). This language refers to a single policy term since rates are developed based on the coverage being offered during a specified policy term.
[6] Any lawful purpose is any purpose that is otherwise a permissible use of the premium funds by an issuer.
[7] In the individual market, the typical policy term is the 12-month calendar year for those who enroll at the beginning of the plan year, or the remaining portion of the calendar year for those who enroll after the start of the plan year. *See* 45 C.F.R. § 144.103.

funds in a manner consistent with how they treat other premium payments after the conclusion of the plan year in which these funds are collected?

A3. No. Sections 1303(b)(2)(C)(ii)(I) and (II) of the ACA and 45 C.F.R. § 156.280(e)(3)(ii)(A) and (B) require QHP issuers in the individual market that cover non-Hyde abortion services to deposit the separate payments that QHP issuers collect for non-Hyde abortion services and for all other covered services into segregated accounts. These provisions further provide that funds in each segregated account "[be] used exclusively to pay for" services other than non-Hyde abortion services and non-Hyde abortion services, respectively.[8]

There is no distinction between how "used exclusively" is written in Sections 1303(b)(2)(C)(ii)(I) and (II) of the ACA, between these provisions and CMS's regulations at 45 C.F.R. § 156.280(e)(3)(ii)(A) and (B), or between CMS's regulatory provisions themselves, for purposes of each distinct segregated account. Accordingly, during the plan year in which the funds were collected, funds in the segregated accounts are required to be used exclusively for their designated purposes. However, after the conclusion of that plan year and all claims have been paid or accounted for, funds from each distinct segregated account become earned premium revenue that can be treated the same as any other premium payments.

This interpretation is consistent with the statutory language at Section 1303(b)(2)(D)(ii) of the ACA, which states that the AV calculation "may take into account the impact on overall costs of the inclusion of such coverage," but issuers "may not estimate such a cost at less than $1 per enrollee, per month." This language suggests that the segregation and exclusivity requirements apply for a single plan year for both non-Hyde abortion services and all other covered services, because rates are developed based on the coverage being offered over a specified policy term.[9] Additionally, the statutory text at Sections 1303(b)(2)(B)(i) and (b)(2)(C)(ii) of the ACA refers to a single plan and collecting payments from enrollees in a given plan, which indicates that the segregation and exclusivity requirements these provisions implement were intended to apply with respect to a finite plan year, including all claims for that plan year, rather than extending indefinitely.

Further, interpreting Section 1303(b)(2)(C)(ii)(II) of the ACA as requiring funds in non-Hyde abortion segregated accounts be used exclusively to cover non-Hyde abortion services in perpetuity would yield impractical results, causing these accounts to amass premium funds well beyond what QHP issuers disburse each plan year for coverage of enrollees' non-Hyde abortion services.

Moreover, this interpretation would suggest the same reading of "used exclusively" in Section 1303(b)(2)(C)(ii)(I) of the ACA for all other covered services. This reading would restrict such funds from being used for broader purposes such as administrative overhead, regulatory compliance, or other essential QHP issuer business operations. Therefore, the best reading of the "used exclusively" restriction in Sections 1303(b)(2)(C)(ii)(I) and (II) of the ACA is that it applies during the plan year in which the funds were collected and until all claims for that plan year have been paid or accounted for, with funds becoming available for use for any lawful

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[8] 42 U.S.C. § 18023(b)(2)(C)(ii)(I) and (II); 45 C.F.R. § 156.280(e)(3)(ii)(A) and (B).
[9] *See supra* notes 5 and 8.

purpose after the conclusion of that plan year and all claims have been paid or accounted for.

Q4. How can QHP issuers in the individual market utilize the funds in their non-Hyde abortion segregated accounts after the conclusion of the plan year during which the funds were collected?

A4. QHP issuers may treat these funds the same as any other premium funds are treated under federal and state law once the coverage period ends at the conclusion of a plan year in which the funds were collected and all claims are paid or accounted for. To utilize these funds for purposes other than non-Hyde abortion services, QHP issuers must move the unspent premium funds in their non-Hyde abortion segregated accounts to general issuer-managed accounts.

We defer to issuers to determine how to utilize these unspent premium funds after the conclusion of the plan year and all claims are paid or accounted for to best meet their needs and the needs of their enrollees, consistent with any applicable federal and state requirements.

Q5. Can individual market QHP issuers draw from funding sources other than their non-Hyde abortion segregated accounts to pay for non-Hyde abortion services?

A5. No. Federal funding cannot be used for non-Hyde abortion services, whether during or after the plan year in which the funds were collected. Sections 1303(b)(2)(A)(i) and (ii) of the ACA and 45 C.F.R. § 156.280(e)(1)(i) and (ii) prohibit QHP issuers in the individual market from using any amount attributable to a premium tax credit (including advance payment of the premium tax credit) or cost-sharing reductions (including advance payments of those funds to an issuer, if any) for coverage of non-Hyde abortion services, regardless of the plan year in which the funds were collected.[10]

Individual market QHP issuers that provide coverage of non-Hyde abortion services are expected to maintain sufficient funds in their non-Hyde abortion segregated accounts to pay all claims for each plan year in which they collected the premium funds. While individual market QHP issuers may move unspent premium funds in their non-Hyde abortion segregated accounts to general issuer-managed accounts after the conclusion of the plan year for which those funds were collected and all claims have been paid or accounted for, these QHP issuers may only ever draw from their non-Hyde abortion segregated accounts to pay for non-Hyde abortions. Therefore, no funds reallocated after the conclusion of the plan year can be used to cover non-Hyde abortion services.

[10] 42 U.S.C. § 18023(b)(2)(A)(i) and (ii); 45 C.F.R. § 156.280(e)(1)(i) and (ii).